IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1089 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders	Court's or Judge's Orders

Mr. Dilip Bodake for the appellants.

Mr. Umesh Mankapure for respondent Nos.1 to 4.

CORAM : ANOOP V. MOHTA,J.

DATED : 10th July, 2007

P.C.

1. The plaintiff/ appellant has filed the present suit against his mother and brother for declaration that the suit properties are the joint family properties and therefore, prayed for separate possession of the respective shares. After considering the material led on the record, the Joint Civil Judge, Junior Division, Vita, by the Judgment and order dated 24/09/1997 partly decreed the suit as described in the plaint

except the land block No.95 and 97 and as house property No. 423. The plaintiff, therefore, preferred an appeal. The appellate Court also, after considering the material on record, held that respondent no.1 proved that the land block No. 95 and 97 and house property No. 423 are his self acquired property. The party who asserts the jointness of the family property must prove the same. The plaintiff as observed by both the courts, failed to support his own case about the jointness of the property basically the block No. 95 and 97 and the house property No.423 in question. The presumption of jointness is always rebuttable. In the present case, after considering the material on record, including the evidence of mother as well as respondent no.1 Shankar, there is

definite material that the above properties are self acquired property of Shankar. After going through the evidence as pointed out by the learned counsel appearing for the plaintiff, I am of the view that there is no perversity in arriving at the conclusion that the suit property is the self acquired property of respondent no.1 Shankar.

2. The findings, therefore, cannot be said to be perverse merely because, as contended by the learned counsel appearing for the appellant that there was no documentary record to support the same. On the contrary, there is sufficient material, basically in regard to the acquisition of these properties by the Shankar as supported by his mother. There are no contra material placed on record by the plaintiff

who has asserted the jointness of the suit property.

3. Resultantly the second appeal is dismissed.

[ANOOP V. MOHTA, J.]